HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE SHRI H.L. DATTU, CJ.

W.P. No.253 of 1994

PETITIONER : Tata Chemicals Limited, a Public Limited Company registered under Companies Act, having its Registered Office at Bombay House, Homy Modi-Street, Bombay

VERSUS

RESPONDENTS

1. State of Madhya Pradesh, through: Secretary, Law, Vallabh Bhawan, Bhopal.
2. South Eastern Coal Fields Ltd; through: Sr. Accounts and Sr. Finance Officer, 13, R.M. Mukerjee Road, Calcutta.
3. Accounts Officer (Sales) South Eastern Coal Fields Ltd; Seepat Road, Bilaspur (M.P.)

W.P. No.254 of 1994

PETITIONER : Tata Chemicals Limited, a Public Limited Company registered under Companies Act, having its Registered Office at Bombay House, Homy Modi Street, Bombay

VERSUS

RESPONDENTS

1. State of Madhya Pradesh, through: Secretary, Law, Vallabh Bhawan, Bhopal.
2. South Eastern Coal Fields Ltd; through: Sr. Accounts and Sr. Finance Officer, 13, R.N. Mukerjee Road, Calcutta.
3. Accounts Officer (Sales) South Eastern Coal Fields Ltd; Seepat-Road, Bilaspur (M.P.)

W.P. No.256 of 1994

PETITIONER : M/s Tata Chemicals Limited, a Public Limited Company registered under the provisions of Companies Act, having its registered office at Bombay House Homi Mody Street, Bombay

VERSUS

RESPONDENTS

1. State of Madhya Pradesh, through: Secretary, Law, Vallabh Bhawan, Bhopal.
2. South Eastern Coal Fields Ltd; through: Sr. Accounts and Sr. Finance Officer, 13,

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R.N. Mukerjee Road, Calcutta.

3. Accounts Officer (Sales) South Eastern Coal Fields Ltd; Seepat Road, Bilaspur (M.P.)

W.P. No.257 of 1994

PETITIONER : Tata Chemicals Limited, a Public Limited Company registered under Companies Act, having its Registered Office at Bombay House, Homy Modi-Street, Bombay

VERSUS

RESPONDENTS

1. State of Madhya Pradesh, through: Secretary, Law, Vallabh Bhawan, Bhopal.
2. South Eastern Coal Fields Ltd; through: Sr. Accounts and Sr. Finance Officer, 13, R.N. Mukerjee Road, Calcutta.
3. Accounts Officer (Sales) South Eastern Coal Fields Ltd; Seepat Road, Bilaspur

W.P. No.258 of 1994

PETITIONER : M/s Tata Chemicals Limited, a Limited Company registered under the provisions of Companies Act, having its registered Office at Bombay House, Homi Mody Street, Bombay.

VERSUS

RESPONDENTS

1. State of Madhya Pradesh, through: Secretary, Law, Vallabh Bhawan, Bhopal.
2. South Eastern Coal Fields Ltd; through: Sr. Accounts and Sr. Finance Officer, 13, R.N. Mukerjee Road, Calcutta.
3. Accounts Officer (Sales) South Eastern Coal Fields Ltd; Seepat Road, Bilaspur (M.P.)

W.P. No.1213 of 1994

PETITIONER : Ambuja Cement Eastern Ltd. a Limited Company registered as such under Companies Act and having its Unit and Office at Modi Gram (Rawan) – 493-31, Distt: Raipur(C.G.) Through constituted attorney Anoop Kumar Jaiswal S/o Late Shri Loknath Jaiswal, Aged about 43 years, r/o Ambuja Colony, Rawan, Baloda bazaar, Raipur (CG)

VERSUS

RESPONDENTS

1. State of Chhattisgarh, through: Secretary, Law, Vallabh Bhawan, Bhopal.

2. South Eastern Coal Fields Ltd; through: Sr. Accounts and Sr. Finance Officer, 13, R.N. Mukerjee Road, Calcutta.
3. Accounts Officer (Sales) South Eastern Coal Fields Ltd; Seepat Road, Bilaspur (M.P.)

W.P. No.1214 of 1994

PETITIONER : Ambuja Cement Eastern Ltd. a Limited Company registered as such under Companies Act and having its Unit and Office at Modi Gram (Rawan) – 493-31, Distt: Raipur(C.G.) Through constituted attorney Anoop Kumar Jaiswal S/o Late Shri Loknath Jaiswal, Aged about 43 years, r/o Ambuja Colony, Rawan, Baloda bazaar, Raipur (CG)

VERSUS

RESPONDENTS

1. State of Chhattisgarh, through: Secretary, Law, Vallabh Bhawan, Bhopal.
2. South Eastern Coal Fields Ltd; through: Sr. Accounts and Sr. Finance Officer, 13, R.N. Mukerjee Road, Calcutta.
3. Accounts Officer (Sales) South Eastern Coal Fields Ltd; Seepat Road, Bilaspur (M.P.)

In the matter of Article 226 and 227 of Constitution of India.

Present: Shri Prateek Sharma & Shri Raja Sharma, counsel for the petitioners.
Shri NK Agrawal, Dy AG for the State.
Shri PS Koshy, counsel for South Eastern Coalfields Limited/respondents.

ORAL ORDER
(Passed on 4th May, 2007)

Since common question of fact and law is involved in these writ petitions, they are clubbed, heard and disposed of by this common order.

(2) The issue raised in these writ petitions is no more *res integra* in view of the law declared by the Apex Court in the case of ***District Mining Officer and others Vs Tata Iron and Steel Co. and another*** reported in ***(2001) 7 SCC 358***. In the said case, the Apex Court observed as under :

> "**18**. In the context of the submissions made by the counsel for different parties, noted above, the crucial question that arises for consideration is what really Parliament intended to

validate by enacting the Validation Act? On a plain reading of Section 2(1) of the said Act, it is crystal clear that it purports to validate certain State laws and actions taken and things done thereunder, by providing that the provisions relating to cesses and other taxes on minerals fictionally must be held to have been enacted by Parliament, and keeping those provisions alive till 4-4-1991. It may be borne in mind that under the Validation Act, Parliament never re-enacted the 11 Acts mentioned in the Schedule, but merely provided the legislative competence for those provisions in those Acts which related to cesses or taxes on minerals. The legislative history behind the enactment of the aforesaid Validation Act unequivocally points out to the fact that the State Legislature had enacted different statutes conferring right of levy and collection of cess and taxes on minerals, and the Supreme Court came to the conclusion that the State Legislature did not have the right to make law conferring right to levy and collection on minerals as the field had been occupied by the Union Legislature on the enactment of the Mines and Minerals (Regulation and Development) Act, 1957. The judgment of this Court in *India Cement*[2] as well as in *Orissa Cement*[4] necessarily led to a situation whereunder not only the 11 Acts mentioned in the Schedule of the Validation Act were declared null and void, but also the collections made under such invalid law became refundable. It is no doubt true, that in *Orissa Cement case*[4] the Supreme Court bore in mind the principle of prospective overruling, as had been done in *Golak Nath case*[9] and indicated the dates with effect from which the judgment would operate but the Acts having been declared null and void the State Governments became apprehensive that a huge amount of tax, already collected under laws, for which State Legislatures did not have the competence to legislate would be required to be refunded. Parliament also was of the same opinion, as would appear from the Statement of Objects and Reasons of the Validation Act and Parliament came forward with a unique device of providing legislative competence in respect of certain provisions of the State laws and that too only keeping the Act alive up to 4-4-1991, the date on which the Supreme Court delivered the judgment in *Orissa Cement case*[4]. It is in this context the provisions of the Validation Act as well as the object for which the Act was enacted will have to be ascertained. A statute is an edict of the legislature and in construing a statute, it is necessary to seek the intention of its maker. A statute has to be construed according to the intent of them that make it and the duty of the court is to act upon the true intention of the legislature. If a statutory provision is open to more than one interpretation, the court has to choose that interpretation which represents the true intention of the legislature. This task very often raises difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before

the legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for and words chosen to communicate such indefinite referents are bound to be in many cases, lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words, the legislative intention i.e. the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. The aforesaid principle was enunciated and applied by this Court in the case of *State of H.P.* v. *Kailash Chand Mahajan*[13]. Lord Somervell in the case of *Attorney-General* v. *HRH Prince Ernest Augustus*[14] (All ER p. 61C-D) has stated:

"The mischief against which the statute is directed and, perhaps, though to an undefined extent, the surrounding circumstances can be considered. Other statutes in pari materia and the state of the law at the time are admissible."

It is also a cardinal principle of construction that external aids are brought in by widening the concept of context as including not only other enacting provisions of the same statute, but its preamble, the existing state of law, other statutes in pari materia and the mischief which the statute was intended to remedy. Chinnappa Reddy, J. in *Reserve Bank of India* v. *Peerless General Finance and Investment Co. Ltd.*[15] had observed: (SCC p. 450, para 33)

"*33.* Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted."

The most fair and rational method for interpreting a statute is by exploring the intention of the legislature through the most natural and probable signs which are either the words, the context, the subject-matter, the effects and consequences, or the spirit and reason of the law. In the court of law what the legislature intended to be done or not to be done can only be legitimately ascertained from that what it has chosen to enact, either in express words or by reasonable and necessary implication. But the whole of what is enacted "by necessary implication" can hardly be determined without keeping in mind the purpose or object of the statute. A bare mechanical interpretation of the words and application of legislative intent devoid of concept or purpose will reduce most of the remedial and beneficent legislation to futility. The courts, however, are always warned that they are not entitled to usurp legislative function under the disguise of

interpretation and that they must avoid the danger of determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somehow fitted. Bearing in mind the aforesaid rules of construction and examining the provisions of the Validation Act, the conclusion is irresistible that Parliament adopted a unique device of providing legislative competence to certain provisions of different State legislations which legislations have already been struck down for lack of legislative competence. As Parliament thought that on account of the judgments of the Supreme Court the State Governments would be liable to make refund of cess and other taxes collected by them, which was likely to have a serious impact on the State revenue, and to prevent the liability of refund, Parliament intended to validate collection of levies already made by the State Governments up to 4-4-1991. This conclusion of ours is based on not only the language used in Section 2(1) but also the Statement of Objects and Reasons, which clearly enunciates the same. The Statement of Objects and Reasons is extracted hereinbelow in extenso:

"*Statement of Objects and Reasons.*—Certain State Acts imposing cesses and other taxes on minerals had been struck down by courts including the Supreme Court of India in different cases. As a result of judgments in these cases, State Governments became liable to refund cesses and other taxes collected by them. Since refund was likely to have a serious impact on State revenues of the State Governments concerned and having regard to the fact that it is extremely difficult to ensure that the levies collected are refunded to the large number of end-users of minerals who have actually borne the burden of such levies, the Cess and Other Taxes on Minerals (Validation) Ordinance, 1992 (Ordinance 7 of 1992) was promulgated by the President on 15-2-1992, to validate collection of such levies by State Governments up to the 4th day of April, 1991."

Though Mr Dwivedi, the learned Senior Counsel appearing for the State of Bihar contended that the preamble to the effect, "an Act to validate the imposition and collection of cesses and certain other taxes on minerals under certain State laws" is much wider than the Statement of Objects and Reasons and is in consonance with the language used in Section 2(1) of the Act, but, we are of the considered opinion that the expression "imposition and collection" would mean, imposition already made or collection already made under certain State laws and the preamble cannot be construed to mean to confer a further right of imposition and collection of cesses on the minerals extracted up to 4-4-1991. That apart, the very heading of Section 2, namely, "Validation of certain State laws and actions taken and things done thereunder", would suggest that Parliament by legal fiction injected legislative competence to the laws enacted by the State Legislature and gave life to such laws up to 4-4-1991, the

date on which the judgment of the Supreme Court in *Orissa Cement case*[4] was delivered, for the purpose of validating the actions taken, things done under such laws declared void by the Supreme Court. It is no doubt true that in *Kannadasan case*[1] a Bench of two learned Judges of this Court interpreted the provisions and held that the effect of validation would confer a right on the State Government to make fresh levy and collection of dues which were collectable up to 4-4-1991, but we are in respectful disagreement with the aforesaid conclusion, as in our considered opinion, neither the language of Section 2(1) nor the objects and reasons appended to the Validation Act, as prefatory note, stipulate that to be the object, nor even Parliament thought it fit to have a saving clause in the Validation Act, as was done in *Jaora Sugar Mills case*[7]. On a construction of the provisions of the Validation Act, and bearing in mind the situation under which the Act was enacted and a void Act was given life up to a particular period by drafting legislative competence for the same in the teeth of the provisions contained in Article 265 of the Constitution, we are persuaded to accept the arguments advanced by the learned counsel appearing for the assessee in different cases, Mr Shanti Bhushan, Mr K.K. Venugopal, Mr Parasaran, Dr Singhvi, Mr Ranjit Kumar and others that the said Validation Act cannot be construed to have conferred a right to make levy and collection of cess or taxes on minerals which were collectable up to 4-4-1991, as was held in *Kannadasan case*[1] but it merely validated the collections already made so that the State will not be burdened with the liability of refunding the amount, already collected under void law. In our considered opinion, therefore, the earlier decision in *Kannadasan case*[1] to the contrary must be held to have been not correctly decided."

(3) Respectfully, following the observations made by the Apex Court, these writ petitions require to be rejected and they are rejected accordingly.

(4) At this stage, Shri Prateek Sharma, learned counsel for the petitioners would submit that the respondents have recovered something more than what was really to be recovered from the petitioners. If that is so, the petitioners are at liberty to make appropriate representation before the respondents for refund of the excess collection of cess from the petitioner, by the respondents. If and when such representation is made, the respondents would consider the same in accordance with law. Ordered accordingly.

Sd/-
Chief Justice